

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8912 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

STATE OF GUJARAT

Versus

MAHENDRAKUMAR RAVJIBHAI RATHOD

Appearance:

1. Special Civil Application No. 8912 of 2001
GOVERNMENT PLEADER for Petitioner No. 1
MR KISHOR M PAUL for Respondent No. 1

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 16/01/2003

ORAL JUDGEMENT

The present petition is filed challenging the judgement and award dated 10.4.2001 passed by the Labour Court, Rajkot in Reference (LCR) No.265 of 1990 whereby the learned Judge was pleased to order reinstatement of the respondent workman with full back wages. The learned Assistant Govt. Pleader had submitted that the learned

Judge has passed the order, ex parte. On 16.1.2002 an order was passed whereby the officer who has affirmed the petition was directed to remain personally present before this Court and to explain as to why appropriate action should not be taken for having stated on oath that,

"The petitioner submits that before Labour Court unfortunately sufficient opportunity was not granted to the petitioner state authority for the purpose of cross examination of workman and for the purpose of leading evidence of the State authority. It is submitted that because of the administrative reasons the recording of the evidence was not possible at the relevant point of time. Hence it was requested to Labour Court to grant time in the matter but the request was turned down and the matter was placed for order. It is submitted that accordingly written arguments were placed on record by the respondent workman and same was required to be answered by the present petitioner but the same could not be done for certain administrative reasons."

2. The concerned officer had remained present before the Court and had filed an affidavit tendering unconditional apology for the aforesaid averments. The deponent also prayed for pardon for the discrepancies which had crept in in the petition. It was also stated in the affidavit that the averments made in para 6 were made without any ulterior motive and only on account of communication gap. Said unconditional apology was accepted.

3. Today when the matter is taken up for final hearing, the learned Assistant Govt. Pleader submitted that virtually this is an ex parte award as the authorities were not able to produce their case before the Labour Court, she therefore, request that in the interest of justice the State authorities may be given an additional chance to produce their case before the court below and contest the matter on merits.

4. Mr.Kishor Paul, the learned advocate for the respondent workman submitted that filing of petition before this Court is not the appropriate remedy. In fact the authorities ought to have filed an application for quashing and setting aside the 'ex parte award'.

5. Taking into consideration the fact that from the judgement and award and more particularly paragraphs no.5,6 7 & 8 of the judgement it is clear that the

department did not avail of the opportunities given to it to lead evidence and to cross examine the employee.

6. In view of the above the following directions are issued:

(i) The judgement and award passed in Reference (LCR) No.265 of 1990 by the Labour Court, Rajkot is hereby quashed and set aside and the matter is remanded to the Labour Court to decide the same after giving an opportunity to the authorities to lead their evidence and also to cross examine the respondent workman. The Labour Court is directed to give priority to hearing of the matter and decide the same as expeditiously as possible preferably within eight weeks from the date of receipt of this judgement.

(ii) The respondent workman shall be paid a cost of Rs.7,500/-, (Rupees seven thousand and five hundred only) for the present proceedings and towards the proceedings which will be conducted on remand. The amount of cost shall be deposited before this Court within four weeks from the date of receipt of this judgement and the same shall be paid to the respondent workman.

(iii) The Chief Secretary, State of Gujarat is directed to hold an inquiry to find out the officer on whose fault Reference (LCR) No.265 of 1990 before Labour Court, Rajkot was decided ex parte. The Chief Secretary is further directed to take appropriate action against the erring officer including that of recovery of the amount of cost of Rs.7,500/-, awarded under this order. The Chief Secretary shall place his report of inquiry within three months from the date of receipt of this judgement.

7. The petition is accordingly allowed. Rule is made absolute to the aforesaid extent.

(Ravi R. Tripathi, J.)
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